

REMARKS

1. Claim of Priority

Initially, Applicant notes that the Examiner has acknowledged a claim of priority to PCT/EP02/04900. The Examiner, however, has cited the incorrect application date for that application, stating that the application was filed with WIPO on 04 May 2004. The priority application PCT/EP02/04900 was, in fact, filed on May 4, 2002, and claimed priority to a German application DE 101 23 725.1, filed on May 15, 2001. Therefore, Applicant submits that the proper priority date for this application should be May 15, 2001.

Additionally, the Examiner has stated that the Applicant is required to submit a priority document to the USPTO under 35 U.S.C. §119(b). In the case of applications claiming priority or continuing from an international application, however, the Director makes no such requirement. Specifically, Section 1893.03(c) states that, when priority is claimed to a PCT application that:

If priority was properly claimed in the international stage of the international application, the claim for priority is acknowledged and the national stage application file is checked to see if the file contains a copy of the certified copy of the priority document submitted to the International Bureau.

Thus, as in this case, where the PCT application properly claims priority to the original foreign application, the first initial step is to check the national stage application file for the priority document. It is only in the case where the national stage application does not include that document that the Applicant is required to file the priority document with the Office.

Applicant is currently in the process of obtaining the priority document, regardless of the outcome of the above-mentioned search. If the Examiner is unable to uncover the priority document from the national-stage file, therefore, Applicant will be happy to provide that document at the appropriate time.

2. Objections to the Claims and Rejection under 35 U.S.C. §112

The Examiner has objected to Claim 51, and rejected that Claim under 35 U.S.C. §112, based on the contention that it is indefinite as written. Applicant has amended the claim to better clarify the claimed method. As amended, Applicant submits the Examiner's objection is rendered moot. Furthermore, Applicant additionally submits that Claim 51 now reads in proper method format, and the steps included therein were Therefore, Applicant submits that the Examiner's objections and rejections have now been overcome.

3. Rejection Under 35 U.S.C. §102

The Examiner has additionally rejected Claims 1-9, 11-19 and 46 under 35 U.S.C. §102(b), based on the contention that they are anticipated by U.S. Publication No. 2003/0086171, published on behalf of McGuire (McGuire'171). Applicant respectfully traverses the Examiner's rejections. As was noted above, the present application claims priority to a PCT application, which in turn claims priority to a German application that was filed on May 15, 2002. The McGuire '171 reference, however, was filed on June 20, 2002, over a month after the priority date of the present invention. Therefore, McGuire '171 was not patented or published prior to the filing date of the present invention, which in turn comprises the constructive invention date, and McGuire '171 is not a proper prior art reference under §102(b).

Similarly, McGuire '171 is not a proper prior art reference under 35 U.S.C. §102(e), either, since the McGuire '171 application was not filed before the date of invention of the present application, namely at least May 15, 2002.

Based on the above, Applicant submits that the Examiner's rejection under 35 U.S.C. §102 is improper, inasmuch as the reference used as the basis for that rejection is not properly prior art to the present application.

4. Allowable Subject Matter

Applicant notes that, regardless of the above, the Examiner has already found that Claims 10, 20-45, 47 and 48 are already in condition for allowance.

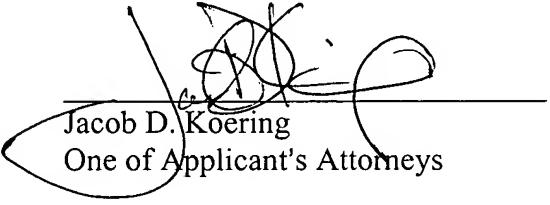
5. Conclusion

Applicant submits that, based on the above, all of Claims 1-51 should now be in condition for allowance. Therefore, reconsideration and passage to allowance is respectfully requested.

Respectfully submitted,

FACTOR & LAKE, LTD.

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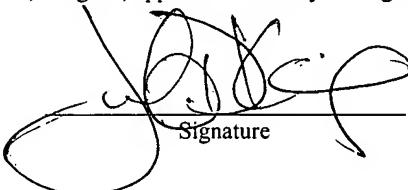

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Jacob D. Koering

Name of Applicant, assignee, applicant's attorney or Registered Representative


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